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**[AGREEMENT OF LEASE IN RESPECT OF MOVABLE ASSETS]**

entered into between

**[LOCAL AUTHORITY]**

and

**[OPERATOR]**

**THIS LEASE** is made on the [DATE]

BETWEEN

- (1) [ ] (the "**Lessor**" which expression shall include successors and permitted assigns); and
- (2) [ ] (registered number [ ]) whose registered office is at [ ] (the "**Lessee**" which expression shall include successors and permitted assigns).

**WHEREBY IT HAS BEEN AGREED AND IS RECORDED AS FOLLOWS :**

**1. INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears –

- a. words importing –
- i. any one gender include the other two genders;
  - ii. the singular include the plural and *vice versa*; and
  - iii. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- b. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
- i. "Concession Area" means the Concession Area as defined in the Contract;
  - ii. "Concession" means the Concession for the construction, financing, design, expansion, rehabilitation, maintenance operation, management of the Water Services and the Sanitation Services and the Works within the Concession Area;
  - iii. "Contract" means the agreement to be entered into between the lessor and the lessee to which this lease is annexed marked **Annexure [ ]**;
  - iv. "Effective Date" means the same day as the Effective Date of the Contract;
    1. "leased assets" means the existing movable water supply service and Sanitation Service assets currently owned by the lessor which are presently use by the lessor in the supply of Water Services within the Concession Area reflected in the moveable asset schedule annexed hereto marked Schedule [ ].
  - v. "lessor" means [LOCAL AUTHORITY] and/or its legal successors in title;
  - vi. "lessee" means [OPERATOR], a private limited company incorporated and registered in accordance with [LEGISLATION], and its legal successors and assigns as permitted by the lessor;
  - vii. "Parties" means the lessor and the lessee;

- viii. "schedule" means the schedule annexed hereto marked **Schedule []**.
- c. any reference in this agreement to "date of signature hereof" shall be read as meaning a reference to the date of the last signature of the Contract;
  - d. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
  - e. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
  - f. when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
  - g. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
  - h. expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions;
  - i. the use of any expression in this agreement covering a process available under [country] law such as, but without limitation to, a winding-up shall, if any of the Parties to this agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
  - j. where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause; and
  - k. the expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
  - l. in the event of any conflict or ambiguity between the provisions of the Contract and this Lease Agreement, the provisions of the Contract shall govern the interpretation of this Lease Agreement.

## 2. **CONDITION PRECEDENT**

This Lease Agreement shall be subject to the conclusion of the Contract and it becoming unconditional due to the fulfilment of any conditions precedent contained therein.

## 3. **ASSETS**

The lessor hereby lets to the lessee, which hereby hires the leased assets, subject to the terms and conditions set out hereunder.

## 4. **DELIVERY**

The lessor shall deliver and the lessee shall take delivery of the leased assets on the Effective Date in the manner envisaged in the Contract.

## **5. PERIOD OF LEASE**

This lease shall commence on the Effective Date and shall continue for the duration of the Contract unless the Contract is terminated pursuant to its terms whereupon this lease shall also terminate.

## **6. RENTAL**

- a. The rental payable by the lessee to the lessor for the first 10 years of this Agreement shall be an amount of [AMOUNT AND CURRENCY] per year exclusive of value added tax which tax shall be payable thereon by the lessee at the prevailing rate from time to time.
- b. On the effluxation of the 10 (ten) year period referred to in 6.(a), the rental payable exclusive of Service Tax shall be reduced to [AMOUNT AND CURRENCY] per year payable annually in advance.
- c. All amounts payable by the lessee to the lessor in terms of this agreement shall be paid in [LOCAL CURRENCY], at the address appointed by the lessor in terms of clause [ ] or at such other place as the lessor may appoint from time to time by written notice direct in the manner set out in the Contract.

## **7. CONDITION OF LEASED ASSETS**

- a. The lessee hires the leased assets on the basis that same are leased on an as is basis and in the condition in which they are delivered to the lessee at the Effective Date and the lessor gives no representation or warranty as to the nature, condition, fitness for purpose, merchantability or suitability of the leased assets.
- b. The lessee shall not be entitled to cancel this lease or withhold, defer or reduce any rental or other amount payable by it in terms hereof by reason of any defect or deficiency in or damage to the leased assets save as may be provided for in the Contract.

## **8. OWNERSHIP**

- a. Ownership of the leased assets shall at all times remain vested in the lessor and neither the lessee nor any person on its behalf shall at any stage before or after the expiry of this lease or the termination of the Contract become the owner of the leased assets or be entitled to retain the possession, use or enjoyment of such leased assets.
- b. The lessee shall not in any way deal with the leased assets, and in particular but without limiting the generality of the foregoing, shall not sell, offer for sale, pledge, sublet, lend or part with possession with the leased assets.
- c. The lessee shall keep the leased assets free from any lien, charge or encumbrance and shall not permit any other person to acquire any right in or to the leased assets.

## **9. RISK**

- a. Risk in and to the leased assets shall pass to the lessee upon the Effective Date or upon delivery of the leased assets whichever is the later, and shall remain on the lessee until such time as the leased assets are returned to the lessor.
- b. If the leased assets or any portion thereof are lost, damaged or destroyed, the lessee shall forthwith
  - i. give the lessor written notice thereof;
  - ii. comply with the provisions of any insurance policy applicable to the leased assets so as to ensure that payment of due compensation is made by the insurer;

- iii. comply duly and timeously with the provisions of the insurance provisions of the Contract.

#### **10. USE OF THE LEASED ASSETS**

The use of the leased assets shall be governed by the terms and conditions of the Contract.

#### **11. RESPONSIBILITY FOR ELECTRICAL INSTALLATIONS**

- a. The lessee agrees that it shall be responsible for –
  - i. the safety, safe use and maintenance of the electrical installations of the leased assets;
  - ii. the safety of the conductors connecting the electrical installations to the point of Supply.
- b. The lessee, to the extent that it fails to comply with the foregoing obligations and as a result the lessor incurs any liability, indemnifies the lessor against all claims, damages or losses of any nature whatsoever which the lessor may sustain as result thereof.

#### **12. INSTALLATIONS AND REMOVAL OF LEASED ASSETS**

- a. Insofar as the leased assets comprise machinery, plant or equipment, the lessee shall be solely responsible for –
  - i. the installation and/or commissioning thereof, which installation and/or commissioning shall be carried out by the manufacturer or supplier of the leased assets or such qualified persons as the manufacturer or supplier may recommend or approve and in accordance with any directions and/or specifications of the manufacturer or supplier in connection therewith;
  - ii. the removal of the leased assets to any other place;
  - iii. the making good of any damage to any such premises caused by the installation and/or removal of the leased assets;
  - iv. ensuring that the premises are suitable in every respect for the installation and operation of the leased assets;
- b. The Lessee shall not otherwise than as provided for in the Contract –
  - i. cede or assign or mortgage or pledge any of its rights under this lease; nor
  - ii. sublet the leased assets or any part thereof; nor
  - iii. place anyone else in occupation of the leased assets or any part thereof,

on any conditions whatsoever or for any reason whatsoever, without the lessor's prior written consent which, in the case of subletting, shall not be unreasonable withheld.

#### **13. MAINTENANCE AND REPAIR**

- a. The lessee shall at its own expense –
  - i. have the leased assets properly and regularly serviced, repaired and maintained in accordance with the provisions of the Contract and the recommendations of the manufacturer and/or supplier and the requirements of any applicable law;
  - ii. ensure that all replacement parts used in the maintenance and repair of the leased assets shall be in strict accordance with the specifications of the manufacturer and/or supplied of the leased assets, and such parts shall be deemed to have acceded to the leased assets and to have become the property of the lessor, and the

lessee shall have no claim against the lessor in respect thereof.

- b. Should any of the leased assets be covered by the provisions of any insurance policy taken out by the lessee in accordance with the provisions of clause 11, the lessor shall reimburse the lessee with the cost thereof, but only to the extent that such costs are recoverable by the lessor under such insurance policy. Such reimbursement shall be made as soon as the necessary restoration and/or repair has been completed to the satisfaction of the lessor and after the lessor shall have received payment in respect thereof from the insurer.
- c. Nothing herein contained shall preclude the lessee from exercising any right which the lessor may have against any manufacturer and/or supplier of the leased assets in terms of any warranty given by such manufacturer and/or supplier in respect thereof, and the lessor hereby cedes to the lessee its rights under all such warranties, if any, on the basis that upon the expiration or earlier termination of this Lease Agreement all such rights as are still enforceable thereunder shall *ipso facto* revert to the lessor. The lessor shall not be liable to the lessee for any failure or refusal on the part of a manufacturer or supplier to fulfil the terms of any such warranty, in whole or in part.

#### 14. **INDEMNITY**

The lessee hereby indemnifies and holds the lessor harmless against all damage, loss, injury, claims, fines or penalties of whatsoever nature and howsoever arising which may be suffered by or instituted against or imposed on the lessor in respect of or in connection with the leased assets or the use, possession or enjoyment thereof by the lessee.

#### 15. **PREMISES**

Insofar as the owner, landlord, mortgagee and occupier is not the lessor, the lessee shall –

- a. notify the lessor in writing of the name and address of the owner, landlord, mortgagee and occupier (if the occupier is not the lessee) of the premises upon which the leased assets will be kept or installed or stored and shall further notify such owner, landlord, mortgagee and occupier by prepaid registered post of the lessor rights or ownership in and to the leased assets;
- b. promptly notify the lessor of any change in the lessee's business or residential address;
- c. promptly notify the lessor of any changes that may occur from time to time in the identity or address of the owner, landlord, mortgagee or occupier of the premises on which the leased assets are kept or installed or stored for the time being, and shall notify each new landlord, owner, mortgagee or occupier such premises of the lessor's ownership of the leased assets.

The lessor shall be entitled, but not obliged to give notice on behalf of the lessee to any person to whom the lessee is required to give notice in terms hereof.

#### 16. **MOVEMENT OF LEASED ASSETS**

- a. Should the leased assets relate to a motor vehicle, such motor vehicle shall not be removed or used outside of [country] without the prior written consent thereto of the lessor.
- b. In respect of any other leased assets, the lessee shall not without the prior written consent thereto of the lessor remove or keep the leased assets or permit or allow the leased assets to be so removed or kept outside of the boundaries of the jurisdiction of the Concession Area.

17. **BREACH**

18. It is recorded that the Parties rights and remedies in respect of any breach of this Lease Agreement shall be governed by the provisions of the Contract.

19. **CESSION**

- a. Save as provided for in the Contract, the lessee shall not cede any of its rights nor delegate any of its obligations under this Lease Agreement to any third Party nor shall the lessee enter into any sublease of the leased assets without the prior written consent thereto of the lessor.
- b. The lessor shall not, save as provided for in the Contract, be entitled to cede all or any of the lessor's rights hereunder including its rights of ownership in the leased assets or any of them, either absolutely or by way of cession *in securitatem debiti*.
- c. In the event of the lessor ceding its rights hereunder, any reference in this Lease Agreement to the lessor shall, unless the context otherwise indicates, be construed as a reference to the cessionary to whom the lessor's rights shall have been ceded in terms hereof.

20. **SPECIAL PROVISIONS IN RESPECT OF VEHICLES**

- a. The lessee shall insure the vehicle/s at its own cost and in its own name in terms of the Compulsory Motor Vehicle Insurance Act, 1972, as amended, and shall comply with the provisions of the said Act and all regulations made under that Act and shall on demand exhibit that declaration of insurance to the lessor.
- b. The lessee shall observe all restrictions on the use of the vehicle/s in a roadworthy condition and when obliged under this Lease Agreement to return the vehicle/s to the lessor, shall return the vehicle/s in a roadworthy and undamaged condition and accompanied by a roadworthy certificate normal wear and tear expected.
- c. The lessee agrees to bear the expense of maintaining and servicing the vehicle/s, including the replacement of worn and defective parts, and of all repairs necessary to keep the said vehicle/s in proper working order at all times during the currency of this Lease Agreement normal wear and tear excepted.
- d. The lessee shall not permit the vehicles to be driven by an unlicensed person or any person precluded from doing so in terms of any insurance policy on the vehicle/s.

21. **NOTICES**

- a. All notices and other communications under this Agreement to any party to this Agreement shall be deemed to be duly given or made when given in writing and: -
  - i. when delivered in the case of personal delivery or post; or
  - ii. when despatched in the case of telex (provided the relevant answer back is received); or
  - iii. when received in the case of facsimile,
  - iv. in each case to such party addressed to it at the address given below

or at such address as such party may after the date of this agreement specify in writing for such purpose to the other parties to this agreement by notice in writing.

the Lessor:

[            ]  
for the attention of            [   ]  
Fax:            [   ]

Lessee

[            ]  
for the attention of            [   ]  
Fax:            [   ]

- b. A written notice includes a notice by facsimile provided that a copy by way of confirmation is also delivered by personal delivery or post.
- c. A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be served on the next following working day in such place.

## **22. WHOLE AGREEMENT, NO AMENDMENT**

- a. This agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- b. No amendment or consensual cancellation of this agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- c. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against any Party in respect of its rights under this agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this agreement.
- d. To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Contract and/or whether it was negligent or not.



SIGNED by the Parties and witnessed on the following dates and at the following places respectively:

DATE                      PLACE                                      WITNESS                                      SIGNATURE

For: LESSOR

1. \_\_\_\_\_

2. \_\_\_\_\_

For: LESSEE

1. \_\_\_\_\_

SAMPLE